DEVELOPMENT AGREEMENT

This Agreement entered into this 24th day of October, 2006, by and between the City of Garden City, hereinafter referred to as "City", and Tim Mussell, 3800 S. Meridian Road, Meridian, ID 83642, the owner of the real property described herein and applicants for Garden City annexation and rezone number ANN2006-00002 / ZON2006-00002, hereafter referred to as "Developer".

WHEREAS, the Developer has applied to the City for annexation and conditional rezone of the property described herein from Ada County zone designation RUT to Garden City zone designation M (mixed use);

WHEREAS, the City, pursuant to Section 8-11-6-7, Garden City Code, and Section 67-6511A, Idaho Code, has the authority to annex and conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Garden City Code;

WHEREAS, it is in the best interest of the parties to annex the real property into the City;

WHEREAS, the parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties and obligations herein set forth.

1. Description and Location of Property, Size of Property, Present Zoning: This annexation and conditional rezone to M (mixed use) shall apply to the property owned by Developer, hereinafter referred to as "the property" and located at 4320 Mountain View Dr, parcel #S0536141952, Ada County. The

property is located within Garden City's area of impact and is approximately 5.47 acres.

2. Use Permitted by this Agreement: The sole uses allowed pursuant to this annexation and conditional rezone as reflected in this Agreement are subject to the submittal of a Planned Unit Development (PUD) or Subdivision application prior to any development of subject property. The PUD or Subdivision shall be consistent with the concept plan submitted to the City with application ZON2006-00002 and attached hereto as Exhibit "A". The PUD or Subdivision shall provide for the construction of no more that 30 townhouses and 1 multi-story commercial building which may also include residential uses; but may not be limited to residential uses. There shall be no height variances requested or permitted in the development of this property. Developer agrees that a PUD or Subdivision application shall be reviewed in relation to the City's design review guidelines and submitted to the Garden City Planning and Zoning Commission for a recommendation to the Garden City Council for final approval. No changes in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Garden City Code. In the event the Developer changes this Agreement without formal modification of this Agreement as allowed by the Garden City Code, the Developer shall be in default of this Agreement.

3. Construction of Use in Conditional Zone: Development of property shall require the submittal of a PUD or Subdivision application to the Garden City Planning and Zoning Commission. The Garden City Planning and Zoning Commission shall make a recommendation to the Garden City Council for final approval. Construction shall be consistent with the terms of this Agreement. Any and all conditions of approval in connection with such PUD or Subdivision application shall be attached to this Agreement as an exhibit. As soon as practicable, provided a PUD or Subdivision in connection with the Property is

approved, this Agreement shall be modified (after complying with the notice and hearing procedures of Section 67-6509, Idaho Code and the Garden City Code) to include such conditions of approval as an exhibit to this Agreement, and this modified Agreement shall thereafter recorded.

4. Commencement of Development: Construction shall commence within Three Hundred Sixty Five (365) days of the effective date, of the Council approved PUD or Plat. In the event the Developer fails to secure approval and commence construction within the time periods herein stated, the Developer shall be in default of this Agreement.

5. Default:

a. In the event the Developer, her/his heirs or assigns or subsequent owners of the property or any other person acquiring an interest in the property, fail to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Garden City Council.

1). In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and the Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default.

2). In the event the City Council, after compliance with the requirements of the Garden City Code, determines that this Agreement shall be terminated, the zoning of the property shall remain M (Mixed Use). All uses of property which are not consistent with Mixed Use zoning shall cease.

b. A waiver by the City of any default by the Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

6. Consent to Rezone: The Developer, by entering into this Development Agreement, does hereby agree that in the event there shall be a default in the terms and conditions of this Agreement that this Agreement shall serve as consent to a reversion of the subject property to Mixed Use zoning, as provided in Section 67-6511 (d), Idaho Code.

7. Notices: Any and all notices required to be given by either of the parties hereto, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

a. To the City:
Garden City
c/o Planning and Zoning Administrator
6015 Glenwood Street
Garden City, Idaho 83714

b. To the Developer:
Tim Mussell
3800 S. Meridian Road
Meridian, ID 83642

Either party shall give notice to the other party of any change of their address for the purpose of this section by giving written notice of such change to the other in the manner herein provided.

8. Attorney Fees: Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

9. Time Is Of The Essence: The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of a default under this Agreement by the party so failing to perform.

10. Binding Upon Successors: This Agreement shall be binding upon and inure to the benefit of the parties respective successors, assigns and personal representatives. This Agreement shall be binding on the owner of the property, each subsequent owner and each other person acquiring an interest in the property.

11. *Effective Date*: This Agreement shall be effective October 24th, 2006.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

DATED this 24th day of ~~May, 2005~~ Oct, 2006.

GARDEN CITY

John Evans, Mayor

CITY OF GARDEN CITY, IDAHO SEAL

Attest:

DEVELOPER

Tim Mussell

STATE OF IDAHO)
:ss
County of Ada)

On this 24th day of October, in the year 2006, before me, personally appeared, John Evans, known to me to be the Mayor of the City of Garden City that executed the said instrument, and acknowledged to me that he executed the same.

Dixie R. Metzger
Notary Public for Idaho
Residing at Nampa, Idaho
My Commission expires 10-31-11

STATE OF IDAHO)
:ss
County of Ada)

On this 24th day of October, in the year 2006, before me, personally appeared, Tim Mussell, known to me to be the owner of the development agreement that executed the said instrument, and acknowledged to me that he executed the same.

DIXIE R. METZGER NOTARY PUBLIC STATE OF IDAHO

Dixie R. Metzger
Notary Public for Idaho
Residing at Nampa, Idaho
My Commission expires 10-31-2011